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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Market Entry and Regulation	)	IB No. 95-22
of Foreign-Affiliated Entities	)	RM-8355
	)	RM-8392

COMMENTS OF FRANCE TELECOM

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SUMMARY

France Télécom ("FT"), as a major international carrier, a proponent of liberalization, a potential investor in Sprint Corporation, and a participant in an alliance with Deutsche Telekom and Sprint, supports the Commission's goals of opening up global telecommunications markets to competition. In establishing and applying an effective market access test as a condition of permitting entry into the U.S. telecommunications market, the Commission should recognize that any such test must be flexible and applied in a way that demonstrates proper sensitivity to the consequences outside the United States.

The trigger for application of an effective market test should be entry by the non-U.S. carrier, that is, when that carrier actually controls a U.S. service provider. In this regard, the Commission should distinguish between minority, non-controlling investments, as to which it should concentrate on detecting and prohibiting discrimination, and entry, which may be the proper subject of an effective market access test.

Any application of the effective market access test to non-controlling investments will undermine the Commission's objective of creating certainty for investors. Given that investors will need to work out the structure of investments before coming to the Commission for approval, a negative decision by the Commission will thwart the Commission's goals: it is unlikely to result in an immediate opening of the market and it will limit a U.S. service provider's access to

capital, denying U.S. and global consumers the benefit of a potentially pro-competitive venture.

The Commission also should not aggregate the investments of two or more non-U.S. carriers for determining whether the threshold for application of the effective market access test has been crossed. If such investments are not considered separately, the Commission and the investors may encounter difficult problems if the relevant home markets are at different stages of openness.

Any effective market access test should be applied equally to global alliances that operate through co-marketing arrangement as to equity investments in a U.S. service provider. There is no basis for distinguishing the two types of legal forms in which global alliances are being established, particularly since incentives to discriminate may well be as much present in one as in the other.

Once the threshold of affiliation is crossed, the Commission should consider the openness of the entire telecommunications market, and not principally whether there is competition in basic, international facilities-based services. Although the Commission properly concludes that adopting a mirror reciprocity standard would be counter-productive, it should emphasize that its approach looks at the state of the market as a whole, and does not give primacy to a particular submarket.

More broadly, the public interest factors considered by the Commission should take note of fast-changing developments in the real world. Today, the Commission knows a great deal about developments in markets outside the United States. Accordingly, in developing the test that it proposes to apply hereafter, the

Commission should assess the results that it would produce with respect to investments from carriers from Europe and elsewhere. In addition, when the Commission looks at whether there is effective market access, significant weight should be given to the fact that U.S. service providers are now competing in various segments of the telecommunications sector of the non-U.S. investor's home market.

The Commission should also consider the overall public interest benefits of a transaction of which an equity investment may be one integral component. The procompetitive advantages of a global venture or alliance may outweigh the fact that an investment by a venture partner might otherwise not pass the effective market access test. If the investment is inextricably linked to the larger transaction, the public interest would, in that circumstance, not be advanced by effectively denying the investment in the U.S. provider.

If the Commission has concerns about the possibility of a non-U.S. carrier having the incentive to discriminate in favor of a U.S. service provider, they can be dealt with adequately by requiring the U.S. service provider to adhere to the conditions established in the BT-MCI transaction. In addition, the Commission could take note of the legal requirements and regulatory environment of the non-U.S. carrier's home market that are aimed at preventing, detecting and providing remedies for unlawful discrimination.

The Commission should not require a U.S. service provider that is affiliated with a non-U.S. carrier to file all accounting rates that the non-U.S. carrier negotiates and maintains with all other countries. Such a requirement is unlikely to give the Commission the data that it would need to determine whether disparities among accounting rates are based on justifiable cost differences. On balance, the filing requirement may not be worth pursuing, given that the Commission's proposal would require disclosure of commercially negotiated rates with carriers that have no contact with the United States (other than their own bilateral relationship) and that the expansive, extraterritorial scope of the filing requirement may give rise to resentment by such carriers and their governments.

Finally, the approach that the Commission adopts for investments in U.S. service providers authorized under Section 214 should be consistent with the approach that it takes with respect to review of non-controlling investments in U.S. common carrier radio station licensees under Section 310(b)(4). In this regard, the Commission should look to the state of liberalization of the entire telecommunications market of the home country, and not just the wireless market, or some submarkets thereof.

Should the Commission adopt a threshold for application of the effective market access test below actual control, the precedent of the BT-MCI transaction should be used for other transactions where non-U.S. carrier investment in a U.S. common carrier radio station licensee does not exceed 20%. Any other result would inequitably and unjustifiably deny U.S. service providers needed access to capital, to the detriment of competition in the United States and globally.

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COMMENTS OF FRANCE TELECOM

France Télécom ("FT"), by its attorneys, respectfully submits these Comments on the Notice of Proposed Rulemaking ("Notice"), FCC 95-53, released February 17, 1995 in the above-referenced proceeding.

INTRODUCTION

FT is an autonomous public operator that provides telecommunications services in France and is a significant provider of international services. As a provider of international services and as a participant in a joint venture that will provide global services on a competitive basis, FT fully supports the Commission's objective of promoting competition in telecommunications services. FT shares the Commission's concern that monopoly facilities-based carriers should not be permitted to discriminate in favor of their affiliates.

FT believes that a non-controlling minority investment by a non-U.S. carrier ought not be viewed as entry into the U.S. market so as to trigger an inquiry into whether U.S. providers have effective market access. In general, investment from outside the United States can be beneficial to U.S. service providers and U.S.

consumers. Absent control of the U.S. service provider, safeguards against discrimination, such as the requirements imposed on MCI in the context of the BT-MCI transaction, plus appropriate non-discrimination provisions in the laws of the non-U.S. carrier's home market, will be adequate to detect and prevent discrimination. See BT/MCI, 9 FCC Rcd 3960, 3965 (1994); Telefónica Larga Distancia de Puerto Rico, 8 FCC Rcd 106, 108-9 (1992).

In crafting its effective market access test, the Commission should adopt an approach that is flexible, given the rapidly changing global telecommunications environment. Similarly, the Commission should recognize that an effective market access test will require that it inquire into and evaluate regulatory structures and traditions that may differ from those of the United States, an undertaking that is delicate at best.

Given the importance of opening up telecommunications markets to participation by global carriers, there may well be some justification for the Commission to make such sensitive determinations in the context of a Section 214 proceeding where actual control is involved. By contrast, a minority investment, which would not constitute market entry, does not create the concerns that would trigger such an inquiry. Commission scrutiny of such investments might, in some countries, be regarded as unwelcome. The Commission will want to avoid any outcome that could result in countries other than the United States maintaining or erecting barriers to minority investments, whether coming from U.S. service providers or others, which would constrain the provision of global telecommunications services. Any policy that would create political or economic reasons for countries to adopt approaches based on strict reciprocity could lead directly to a downward spiral of reciprocity and protectionism, a result that would defeat the Commission's goals and thwart the interests of carriers worldwide.

In this respect, many international carriers, including FT, share the Commission's interest in opening markets. Other international carriers -- notably BT and MCI, through Concert, and AT&T, Unisource and the WorldPartners consortium -- already are competing vigorously on a global basis and in FT's home market. For these reasons, and as the Commission is aware, FT, together with Deutsche Telekom ("DT"), has proposed to make a substantial investment in, and enter into a global venture with, Sprint Corporation; as proposed, FT's total interest in Sprint will be 10%, which, FT respectfully suggests, should not be regarded as "entering" the U.S. market.

FT concurs with the Commission's conclusions that the emergence of global alliances, predicated on the needs and demands of global consumers, is procompetitive. For this reason, the Commission, in this proceeding, should ensure that its approach encourages investment by non-U.S. carriers in U.S. service providers and alliances between U.S. providers and their global partners. Such investment and such alliances enhance competition and infrastructure development in the United States, and will contribute significantly to the strengthening and expansion of the Global Information Infrastructure.

I. AN EFFECTIVE MARKET ACCESS TEST SHOULD NOT BE APPLIED TO A NON-CONTROLLING MINORITY INVESTMENT, SHOULD NOT AGGREGATE TWO OR MORE NON-U.S. CARRIER INVESTMENTS, AND SHOULD APPLY EQUALLY TO CO-MARKETING ARRANGEMENTS.

A. The Threshold for Application of the Effective Market Access Test Should Be Actual Control.

The Commission has asked for comments on the definition of affiliation for purposes of applying an effective market access rule. Although the Notice appears to conclude that it is "inappropriate" to use control as a threshold for application of an entry standard,[1] FT respectfully suggests that the logical and most appropriate threshold for application of the new test is actual control.

Notwithstanding the Commission's conclusions in the BT/MCI transaction, it has, in its Section 214 jurisprudence, historically -- and properly -- drawn a line between control (whether such control is de facto or de jure) and minority investments. FT submits that there are sound reasons for not departing from this standard. Any other standard will necessarily be arbitrary and have the effect of undermining the Commission's goals in this proceeding. It is principally in a situation where a non-U.S. carrier controls a U.S. service provider that such carrier's incentives to discriminate might outweigh the public interest benefits of making capital and technology from outside the United States available to U.S. companies. In short, FT believes that a non-U.S. carrier's majority investment in, or its actual control

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1. Notice, at ¶ 56.

over, a U.S. service provider should be the benchmark for triggering application of the effective market access test.[2]

Previous decisions of the Commission support the view that a minority investment in a U.S. carrier is not "entry" into the U.S. market. The Commission has rightfully concluded that, absent a controlling interest in a U.S. carrier, a non-U.S. carrier would be unable to direct the actions of the U.S. service provider and the U.S. provider would be unwilling to risk sanctions by the Commission for discriminatory conduct that violated its rules, policy or any conditions of its Section 214 certificates. Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7332 (1992). The Commission noted that U.S. service providers are subject to ongoing reporting requirements designed to detect discrimination by non-U.S. carriers or administrations in favor of specific U.S. carriers. Id.

In its BT-MCI decision, the Commission concluded that there was no transfer of control of a U.S. facilities-based carrier. It expressly held that a 20% non-controlling minority investment in a U.S. carrier is not "entry" into the U.S. market. BT-MCI, 9 FCC Rcd 3960, 3965 (1994) (citing Optel Communications, Inc., 8 FCC Rcd 2267 (1993)). Prior to that decision, however, the Commission had seldom, if ever, reached out, in a Section 214 context, to pass on the public interest

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2. In this regard, it is FT's position that the Commission should not alter the current definition of "affiliate," which is set out in Paragraph 65 of the Notice and Section 63.01(r)(i) of its Rules.

consequences of a minority investment.[3] The BT-MCI petition sought a declaratory ruling that the minority investor protections afforded BT did not constitute a transfer of control and that, consistent with Section 310(b)(4), a greater-than 25% investment in MCI would not be contrary to the public interest. In considering the petition, the Commission addressed, apparently for the first time, the question of whether a minority investment by a non-U.S. carrier in a U.S. service provider was, apart from Section 310(b) concerns, in the public interest.[4]

In a few instances, the Commission has had an opportunity to review controlling investments by monopoly non-U.S. carriers in service providers authorized under Section 214. In these circumstances, however, the Commission has favored an open entry policy where there were adequate nondiscrimination safeguards to protect other U.S. carriers. See, e.g., AmericaTel Corp., 9 FCC Rcd 3993, 4000 (1994); Telefónica Larga Distancia de Puerto Rico, 8 FCC Rcd at 108-9.

Given the broad potential scope and highly uncertain application of the Commission's proposed effective market access test, an investment that exceeds the threshold will have substantial consequences for non-U.S. carriers, and for U.S. service providers desirous of capital from outside the United States. Such carriers

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3. Indeed, because Section 214, unlike Section 310(b), is not expressly targeted at foreign investment, the adoption of a threshold lower than control for application of the effective market entry standard may well confuse Section 214 jurisprudence.

4. It is unclear by what procedure the issue would have reached the Commission's attention had there been no need for MCI to seek a declaratory ruling under Section 310.

and service providers would need to obtain Commission permission for a transaction that previously might not have been subject to regulatory review. For this reason, the Commission must base its selection of the threshold for affiliation on the soundest of rationales. FT believes that any such threshold that is lower than actual "control" would necessarily be arbitrary.

If, for example, the Commission decided that a 30% investment by a non-U.S. carrier should trigger application of the effective market access test, the test would then apply equally to a purchase of a non-controlling 30% interest in a U.S. service provider as to a purchase of 51% or 100%. The assumptions undergirding the Commission's Notice suggest that the greater the investment in the U.S. service provider, the greater the incentive to discriminate. Nonetheless, presumably it would be difficult for the Commission to find that any such incentives would increase appreciably as between a 28% and a 30% investment (so as to trigger application of the test), but not as between a 30% and 49% investment.

By contrast, where a non-U.S. carrier actually controls a U.S. service provider it has, absent regulation and marketplace forces, both the ability and a substantial incentive to engage in discriminatory behavior in both the United States and the non-U.S. market. Most importantly, application of an effective market access test in this situation would have the greatest force -- denying a carrier from outside the United States an opportunity to be a competitor in the U.S. market -- while not placing at a disadvantage an existing U.S. carrier that simply wanted access to capital.

B. Application of the Effective Market Access Test to Non-controlling Investments Will Create Uncertainty for Both Non-U.S. and U.S. Carriers.

The Commission justifies its proposal, in part, by stating that a "formal rulemaking also would give foreign entities more certainty when making investment decisions, and provide an incentive for foreign administrations with currently closed markets to consider opening their markets."[5] With all due respect, FT does not believe that the Commission's approach will achieve these goals.

The Commission's effective market entry test will presumably operate such that a non-U.S. carrier investment in a U.S. service provider below the entry threshold will not be reviewed by the Commission at all (unless the threshold is set above 25% and the U.S. carrier holds radio station licensees). Investments above the threshold, however, will have to be reviewed by the Commission to ensure that the non-U.S. carrier's home country passes the effective market access test. These investment arrangements may well have been painstakingly negotiated over the course of months before being filed with the Commission. Unless the Commission were to publish and regularly update a list of countries that are deemed to afford effective market access -- an approach that seems impractical and likely to evoke negative reactions from countries not included on such a list -- the parties will not know how the Commission would apply the effective market access test. This would particularly be so given the multiple factors that the Commission will and should take into account

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5. Notice, at ¶ 26.

in determining effective market access. Such uncertainty will only undercut the Commission's stated goal of encouraging procompetitive investments and making the investment decision more certain.

A country's failure to get a passing grade may, notwithstanding the good intentions of one of its carriers seeking to invest in a U.S. service provider, throw the parties back to the beginning. That is, if the Commission disapproves the transaction, the parties will then be on the horns of a dilemma. They would have two choices.

First, if the investment eventually is to be authorized by the Commission, the home country market must be opened to the satisfaction of the Commission. This would be the responsibility of the home country government and not of the non-U.S. carrier, however. Indeed, with regard to certain facets of effective market access that the Commission deems critical -- such as the existence and procedures of an independent regulatory body -- it is, presumably, preferable if the non-U.S. carrier has no role whatsoever. Moreover, as the Commission is aware from experience in the United States and from observing the process of liberalization in Europe and elsewhere, market-opening moves are enormously difficult to engineer. Liberalization is a complex product of, and highly susceptible to, a plethora of political, economic, legal and other factors.

Second, the parties can renegotiate the terms and size of the non-U.S. carrier's investment. Given that it would be difficult to effect market opening changes, their only option would be to reduce the size of that investment below the entry threshold. Although a lower investment might satisfy the terms of the Commission's test, it would not result in the Commission achieving any of the three basic goals set out in Paragraph 26 of the Notice.

The Commission's goals could be achieved if all non-U.S. carriers always refrained from making investments in U.S. service providers until home markets were fully liberalized to the satisfaction of the Commission and, therefore, all parties were certain that the investment could pass the effective market access test. In the real world, however, it may not be possible or desirable for capital investments to be delayed until such certainty is evident. In the meantime, consumers would be deprived of the benefits resulting from the potential investment.

In short, a negative decision by the Commission would probably 1) not result in immediate market opening and 2) deprive, or unnecessarily limit, a U.S. service provider's access to capital from outside the United States, capital for which it had specifically negotiated. Given that these are the most likely outcomes of a transaction's failure to meet the Commission's proposed test, it seems highly doubtful that application of the rule to deny an investment would advance the public interest.

C. Investments by Two or More Non-U.S. Carriers Should Not Be Aggregated for Purposes of Applying Entry Regulation.

The Commission also asks how to apply the effective market access test in situations "where more than one foreign carrier or a foreign carrier consortium has ownership interests in a U.S. carrier."[6] FT believes that if, notwithstanding the

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6. Notice, at ¶ 61.

preceding views, the Commission were to adopt a threshold below that of actual control, it should not aggregate the investments of two or more non-U.S. carriers that act jointly. Each carrier's investment should be considered separately for purposes of determining whether the threshold applies. As the Notice suggests, any single carrier's purported incentive to discriminate could be no greater than that driven by the carrier's investment in the U.S. service provider.

Aggregating the investments of two or more non-U.S. carriers will pose significant real-world problems for non-U.S. investors and U.S. companies. Under the Commission's proposed approach, once the threshold for affiliation is crossed, effective market access apparently will be determined on a country-by-country basis. Yet, what would be the consequences of a determination that the home market of one of the non-U.S. carriers offers effective market access while the other carrier's home market does not? Will the investment from the carrier with the "closed" market be prohibited? Will the investment from the carrier with the "open" market not count toward the threshold and the investment, therefore, be permitted if the size of the investment from the carrier with the "closed" market is below the threshold? If the entire investment of the consortium is prohibited, what signals will be sent with respect to encouraging countries to open up their markets?

Complex business arrangements among the non-U.S. carriers and with the U.S. service provider will have been finalized by the time that such an investment would be brought to the Commission. Consequently, there may be very little time or real opportunity to restructure the transaction to satisfy the Commission's concerns.

In short, any approach that aggregates two or more non-U.S. carriers' investments will impede the ability of U.S. carriers to attract investment and forge global alliances, and could well jeopardize the Commission's goals of fostering global competition.

D. If Applied to Non-controlling Investments, the Effective Market Access Test Should Be Applied Equally to Co-Marketing Arrangements.

Finally, there is no rational basis for the Commission's tentative conclusion "that no foreign carrier entry regulation is required for co-marketing arrangements, such as AT&T's WorldPartners Company, provided they are, both in theory and in practice, nonexclusive (e.g., they do not give the U.S. carrier the exclusive right to provide joint basic services in correspondence with any particular foreign carrier)."[7] There is simply no support for the assumption that incentives to discriminate are somehow lessened where a global alliance is operating through a "co-marketing" arrangement rather than through a venture that is coupled with an equity

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7. Notice, at ¶ 62 (footnote omitted). It is unclear why the Commission considers "nonexclusivity" of a co-marketing arrangement in terms of the joint provision of basic services. Nor is it clear why such nonexclusivity would distinguish a co-marketing arrangement from a joint venture coupled with a non-U.S. carrier's investment in a U.S. service provider. Any such exclusive arrangement would, presumably, violate the Commission's rules. See 47 C.F.R. § 63.145 (1994). FT notes that its alliance with Sprint and DT would similarly be nonexclusive; as previously represented to the Commission, Sprint will not have the exclusive right to provide joint basic services between the United States and France and the United States and Germany in correspondence with FT and DT, respectively. See In the Matter of Sprint Corporation, Petition for Declaratory Ruling Concerning Sections 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, at 30 (filed Oct. 14, 1994).

investment. In this regard, whether there will be incentives, and which way they will flow, will depend entirely on the terms of the co-marketing arrangement. A co-marketing arrangement can allocate revenues to encourage discrimination by non-U.S. carriers, and can be far less transparent to regulators and shareholders than would be the dividends flowing from a non-controlling equity investment. There simply is no reason to tie Commission review to the legal form in which the partners in a global alliance choose to conduct their global business.

FT is mindful of, and shares the Commission's views that, all telecommunications markets should be making progress toward full liberalization. Accordingly, if the purpose of the Commission's proceeding is to increase opportunities to provide services in all markets, then it is difficult to see why leverage should not be applied equally, both to a market where the monopoly carrier is providing services in a global alliance with a U.S. carrier through a co-marketing arrangement and to a market where the national carrier and the U.S. service provider have chosen to couple their venture with an equity investment in the U.S. provider.

For these reasons, global alliances that involve co-marketing arrangements between U.S. service providers and non-U.S. carriers should enjoy precisely the same scrutiny as that which the Commission proposes to accord investments in U.S. service providers by non-U.S. carriers. To the extent that all such non-U.S. carriers may have incentives to discriminate, these incentives may well be identical.

As described in Section III below, FT believes that any concerns that the Commission has with respect to the potential and incentive to discriminate -- where a non-U.S. carrier does not control the U.S. service provider -- can be addressed by requiring the conditions that were imposed on MCI and Newco in the context of the BT-MCI transaction. Such requirements should be imposed on the U.S. partner in a co-marketing arrangement, as well as on any joint venture entity created by the parties to such an arrangement. As the Commission has recognized, such conditions are needed to ensure that a carrier that has bottleneck control in a non-U.S. market will not be able to discriminate against a U.S. service provider on the route to and from the United States.

A decision by the Commission to impose the conditions that it has developed to address its concerns with discrimination will have real-world consequences for the development of global competition and the extent to which U.S. -- and all other -- consumers will benefit. For its part, FT would like to ensure that its venture with Sprint and DT is not the victim of discrimination in its relations with non-U.S. monopoly carriers in countries that are members of AT&T/Unisource, the Cable & Wireless Federation, and other consortia.[8]

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8. FT notes that the European Commission recently announced that it has launched an examination of the arrangements regarding Unisource, as well as Unisource's links with AT&T under European Union competition law. Commission Examines a Third Strategic Alliance in the Telecommunications Sector, European Commission Press Release No. IP/95/288 (March 22, 1995). Having cleared the BT/MCI venture, and in light of its upcoming review of the Sprint/FT/DT transaction, the European Commission clearly is concerned (continued...)

II. ANY EFFECTIVE MARKET ACCESS TEST SHOULD CONSIDER THE OPENNESS OF THE ENTIRE TELECOMMUNICATIONS MARKET AND NOT ONLY THE BASIC, INTERNATIONAL FACILITIES-BASED SERVICES SEGMENT.

A. The Test Should Focus on the State of the Entire Telecommunications Market.

The Commission proposes a two-part test that, first, would focus on whether U.S. carriers could "provide basic, international telecommunications facilities-based services in the primary markets served by the [foreign] carrier desiring entry,"[9] and, second, other public interest factors, including the general state of liberalization in the home market of the non-U.S. carrier.[10] If an effective market access test is to be applied, then the Commission should consider all relevant aspects of the telecommunications sector in the non-U.S. carrier's home market, and not accord primacy to the basic, international facilities-based segment of that market.

The Commission is correct to reject the position that a market must mirror that of the United States before a carrier can make a minority investment in a U.S. service provider. FT concurs with the Commission's assessment that, "[g]iven the varying market and regulatory conditions around the world, it would be impossible to find a situation where essentially identical market access exists."[11]

8.(...continued)
that one of the major global consortia being formed would receive disparate, and perhaps unjustifiably favorable, treatment if it were to escape its scrutiny.

9. Notice, at ¶ 40.

10. Notice, at ¶ 45.

11. Notice, at ¶ 41.

FT believes that any such approach would undermine the Commission's objectives because it fails to take account of the reality that all governments find themselves at different points on the continuum toward liberalization. Were the Commission to take an all-or-nothing approach that required effective market access in a particular market segment before non-U.S. carriers were permitted to invest in the United States, the Commission would remove any incentives for governments to liberalize progressively. An inflexible effective market access test would deprive U.S. providers of the opportunity to avail themselves of capital from outside the United States, while doing little to stimulate further liberalization in countries worldwide.

Focusing principally on the ability of U.S. service providers to provide basic, international facilities-based services may have additional unfortunate consequences. Non-U.S. carriers do not currently enjoy the ability to provide the full range of facilities-based services in the United States. A rigid test that looks exclusively, or even primarily, at a single submarket, might well generate an impetus for governments to enact similar well-intentioned tests based on strict reciprocity. These could redound to the detriment of all global service providers, including those from the United States and Europe.

For all these reasons, FT urges that the Commission affirm its preliminary view that any effective market access test must be flexible enough to consider all segments of a telecommunications market. The extent to which such segments are open to competition should be considered an integral element of the Commission's entire test and not be given merely secondary weight.

B. <u>The Public Interest Factors Must Include the Actual State of Openness in a Market and Committed Progress Toward Liberalization.</u>

The Commission is developing the effective market access standard against the backdrop of fast-changing developments in the real world. U.S. service providers are competing vigorously outside the United States, including in Europe and France. Rapid and committed progress toward market liberalization, and full competition, in Europe and France has been widely publicized and is well known to the Commission. In short, before formalizing and announcing an effective market access test, the Commission has an opportunity to assess the results of applying the test with respect to investment by carriers from many countries other than the United States and, particularly, from Europe. FT asks that the Commission avail itself of that opportunity, and that it consider current developments, and the results of applying the standard, in this proceeding.

Among the public interest factors that it should consider in applying an effective market access test is whether and to what extent service providers are given the opportunity to compete, and are actually doing so. That is, the Commission should accord considerable weight to the fact that U.S. service providers are present, and are able to compete with a non-U.S. carrier, in that carrier's home market.

FT notes, in this regard, that U.S. service providers already are providing an array of telecommunications services in Europe generally, and in France in particular. Indeed, MCI's Concert subsidiary is already providing international virtual network service in France and Germany, among other countries.[12] Today, AT&T provides corporate networking and other services in France. U.S. carriers compete actively with FT in wireless and cable television markets in France. Such competition by U.S. service providers in France -- which is far greater than that by FT in the United States -- is an important real-world indication of the openness of, at least, the French market.

Similarly, the Notice quite appropriately suggests that anticipated market opening "in the near future" should also be considered.[13] The Commission should take due account of the fact that the European and French telecommunications markets have undergone very rapid change and are now substantially open to competition, except with respect to so-called reserved services, essentially public switched voice telephone service offered on a commercial basis to the public. At both the European level and in France there is a firm political commitment to open all markets, including that for public switched voice telephone service, and infrastructure, to full competition by January 1, 1998. Rules, policies, administrative procedures and regulatory safeguards have been, and are being, put in place by both the European Commission and the French Government to ensure that competition is fair and that owners of infrastructure and operators of reserved services are unable to

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12. See "New BT Service," Edge, No. 341, Vol. 10 (February 6, 1995).

13. Notice, at ¶ 40.